

# MANDATE

19-865(L)

Strauss v. Crédit Lyonnais, S.A.

1 UNITED STATES COURT OF APPEALS  
2 FOR THE SECOND CIRCUIT

3 *S U M M A R Y O R D E R*

4  
5 **RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT.**  
6 **CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007,**  
7 **IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE**  
8 **PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A**  
9 **SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY**  
10 **MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC**  
11 **DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING**  
12 **A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT**  
13 **REPRESENTED BY COUNSEL.**

14 At a stated Term of the United States Court of Appeals for the Second Circuit, held  
15 at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of  
16 New York on the 7th day of April, two thousand twenty-one.

17 Present: AMALYA L. KEARSE,  
18 DENNIS JACOBS,  
19 JOSÉ A. CABRANES,

20 *Circuit Judges.*  
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22 MOSES STRAUSS, PHILIP STRAUSS, BLUMA STRAUSS, AHRON  
23 STRAUSS, ROISIE ENGELMAN, JOSEPH STRAUSS, TZVI WEISS, LEIB  
24 WEISS, MALKE WEISS, YITZCHAK WEISS, YERUCHAIM WEISS, ESTHER  
25 DEUTSCH, MATANYA NATHANSEN, CHANA NATHANSEN,  
26 MATANYA AND CHANA NATHANSEN for THE ESTATE OF TEHILLA  
27 NATHANSEN, YEHUDIT NATHANSEN, S.N., a minor, HEZEKIEL

MANDATE ISSUED ON 04/28/2021

1 TOPOROWITCH, PEARL B. TOPOROWITCH, YEHUDA TOPOROWITCH,  
2 DAVID TOPOROWITCH, SHAINA CHAVA NADEL, BLUMA ROM,  
3 RIVKA POLLACK, EUGENE GOLDSTEIN, LORRAINE GOLDSTEIN,  
4 BARBARA GOLDSTEIN INGARDIA, RICHARD GOLDSTEIN, MICHAEL  
5 GOLDSTEIN, CHANA FREEDMAN, MICHAL HONICKMAN for THE  
6 ESTATE OF HOWARD GOLDSTEIN, MICHAL HONICKMAN, DAVID  
7 GOLDSTEIN, HARRY LEONARD BEER as Executor of THE ESTATE OF  
8 ALAN BEER, HARRY LEONARD BEER, ANNA BEER, PHYLLIS MAISEL,  
9 ESTELLE CARROLL, SARRI ANNE SINGER, JUDITH SINGER, ERIC M.  
10 SINGER, ROBERT SINGER, JULIE AVERBACH for THE ESTATE OF  
11 STEVEN AVERBACH, JULIE AVERBACH, TAMIR AVERBACH, DEVIR  
12 AVERBACH, SEAN AVERBACH, A.A., a minor, MAIDA AVERBACH for  
13 THE ESTATE OF DAVID AVERBACH, MAIDA AVERBACH, MICHAEL  
14 AVERBACH, EILEEN SAPADIN, DANIEL ROZENSTEIN, JULIA  
15 ROZENSTEIN SCHON, ALEXANDER ROZENSTEIN, ESTHER  
16 ROZENSTEIN, JACOB STEINMETZ, DEBORAH STEINMETZ, JACOB  
17 STEINMETZ AND DEBORAH STEINMETZ for THE ESTATE OF  
18 AMICHAEL STEINMETZ, NAVA STEINMETZ, ORIT MAYERSON,  
19 NATANEL STEINMETZ, ROBERT L. COULTER, SR. for THE ESTATE OF  
20 JANIS RUTH COULTER, DIANNE COULTER MILLER, ROBERT L.  
21 COULTER, SR., ROBERT L. COULTER, JR., LARRY CARTER as the  
22 Administrator of THE ESTATE OF DIANE LESLIE CARTER, LARRY  
23 CARTER, SHAUN CHOFFEL, RICHARD BLUTSTEIN AND KATHERINE  
24 BAKER for THE ESTATE OF BENJAMIN BLUTSTEIN, RICHARD  
25 BLUTSTEIN, KATHERINE BAKER, REBEKAH BLUTSTEIN, NEVENKA  
26 GRITZ for THE ESTATE OF DAVID GRITZ, NEVENKA GRITZ, NEVENKA  
27 GRITZ for THE ESTATE OF NORMAN GRITZ, JACQUELINE CHAMBERS  
28 as the Administrator of THE ESTATE OF ESTHER BABLAR, JACQUELINE  
29 CHAMBERS, LEVANA COHEN, ELI COHEN, SARAH ELYAKIM,  
30 YEHUDA AGABABA, MENACHE AGABABA, YEHEZKEL AGABABA,  
31 GRETA GELER, ILANA EROPA DORFMAN, REFAEL KITSIS AND TOVA  
32 GUTTMAN as the Administrators of THE ESTATE OF HANNAH ROGEN,  
33 AKIVA ANACHOVICH, TEMIMA SPETNER, JASON KIRSCHENBAUM,  
34 ISABELLE KIRSCHENBAUM, ISABELLE KIRSCHENBAUM for THE  
35 ESTATE OF MARTIN KIRSCHENBAUM, JOSHUA KIRSCHENBAUM,  
36 SHOSHANA BURGETT, DAVID KIRSCHENBAUM, DANIELLE  
37 TEITELBAUM, NETANEL MILLER, CHAYA MILLER, ARIE MILLER,

1 ALTEA STEINHERZ, JONATHAN STEINHERZ, BARUCH YEHUDA ZIV  
2 BRILL, CHAYA BEILI, BENNETT AND PAULA FINER as Legal Guardians  
3 for CHANA NACHENBERG, DAVID NACHENBERG, S.N., a minor,  
4 BENNETT FINER, PAULA FINER, ZEV FINER, SHOSHANA FINER  
5 OHANA, MINA DORA GREEN, MINA DORA GREEN for THE ESTATE  
6 OF HOWARD M. GREEN, STEVEN GREENBAUM for THE ESTATE OF  
7 JUDITH GREENBAUM, STEVEN GREENBAUM, ALAN HAYMAN,  
8 SHIRLEE HAYMAN, DAVID DANZIG, NEIL DANZIG for THE ESTATE  
9 OF REBECCA DANZIG, NEIL DANZIG, HAYYIM DANZIG, SARAH  
10 PEARLMAN, CLARA BEN-ZAKEN LASER, NETANEL HERSKOVITZ,  
11 MARTIN HERSKOVITZ, PEARL HERSKOVITZ, YAAKOV HERSKOVITZ,  
12 JOSHUA FAUDEM, ZOHAR FATER, BRUCE MAZER, ORLY ROM,  
13 RICHARD COFFEY, GAL GANZMAN, JUDITH BUCHMAN-ZIV, ORA  
14 COHEN, MIRAV COHEN, DANIEL COHEN, O.C., a minor, S.C., a minor,  
15 E.N.C., a minor, FAIGA ZVIA LIEBERMAN, EINAT NOKED for THE  
16 ESTATE OF EYAL NOKED, EINAT NOKED, A.N., a minor, AVISHAG  
17 NOKED, BARUCH ZURI NOKED, BINYAMIN ELKANA NOKED, NETA  
18 NECHAMA COHEN, T.N., a minor, KAREN GOLDBERG, CHANA WEISS,  
19 ESTHER GOLDBERG, YITZHAK GOLDBERG, SHOSHANA GOLDBERG,  
20 ELIEZER GOLDBERG, Y.M.G., a minor, T.Y.G., a minor, NILLY CHOMAN  
21 and GILA ALUF

22 *Plaintiffs-Appellants-Cross-Appellees,*

23  
24 - v. -

Nos. 19-865(L)  
19-1285(XAP)

25  
26 CRÉDIT LYONNAIS, S.A.,

27 *Defendant-Appellee-Cross-Appellant.*

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29 ESTATE OF BERNICE WOLF, ARI HOROVITZ, BATSHEVA HOROVITZ  
30 SADAN, DAVID HOROVITZ, ESTATE OF DEBRA RUTH HOROVITZ,  
31 ESTATE OF ELNATAN HOROVITZ, ESTATE OF LEAH HOROVITZ,  
32 ESTATE OF MOSHE HOROVITZ, NECHAMA HOROVITZ, SHULAMITE

1 HOROVITZ, TOVA HOROVITZ NAIMAN, TVI HOROVITZ, URI  
2 HOROVITZ, ESTATE OF BRYAN WOLF, STANLEY WOLF, AVERHAM  
3 GROSSMAN, DEVORAH CHECHANOW LEIFER, JOSEPH LEIFER,  
4 BRACHA MILSTEIN, SHIFRA MILLER, CHAYA ROSENBERG,  
5 ABRAHAM WAXLER, ARTHUR WAXLER, BARUCH WAXLER, CHANA  
6 WAXLER, DINA WAXLER, EZEKIEL WAXLER, GEDALIA WAXLER,  
7 HAGGI WAXLER, NACHUM WAXLER, OBADIAH WAXLER, YAAKOV  
8 WAXLER, YOEL WAXLER, ZACHARIA WAXLER, NETHANIEL BLUTH,  
9 MOSHE NAIMI, FAYE CHANA BENJAMINSON, THE ESTATE OF  
10 MOSHE GOTTLIEB, SEYMOUR GOTTLIEB, SHEILA GOTTLIEB, PHILIP  
11 LITLE, ESTATE OF ABIGAIL LITLE, ELISHUA LITLE, HANNAH LITLE,  
12 HEIDI LITLE, JOSIAH LITLE, NOAH LITLE, FRAN STRAUSS BAXTER,  
13 WILLIAM J. BAXTER, ARIELA FREIRMARK, MENACHEM FREIRMARK,  
14 HADASSAH FREIRMARK, PHYLLIS PAM, RIVKA REENA PAM,  
15 SHOSHANA TITA, EZRA TITA, EPHRAIM TITA, EPHRIAM TITA for THE  
16 ESTATE OF BERTIN TITA, RACHEL POTOLSKI, OVADIA  
17 TOPPOROWITCH, YISRAEL TOPPOROWITCH, YITZCHAK  
18 TOPPOROWITCH, MIRIAM EHRENFELD, ROSE JOSEPH, LEIBEL  
19 REINITZ, MALVIA REINITZ, MARGALI REINITZ, MENDY REINITZ,  
20 MIRIAM REINITZ, RIVKA REINITZ, SAMUEL REINITZ, SHMUEL  
21 REINITZ, YAKOV REINITZ, THE ESTATE OF YISSOCHER DOV REINITZ,  
22 YITZCHOK REINITZ, RAIZEL SHIMON, LEAH TAUBER, HELEN  
23 WEIDER, AVROHOM D. RICHTER, BREINA RICHTER, MIRIAM LEAH  
24 RICHTER, MOSHE RICHTER, NECHAMA RICHTER, SARA MALKA  
25 RICHTER, SHLOMO CHAIM RICHTER, TRANNE RICHTER, YAKOV  
26 YOSEF RICHTER, THE ESTATE OF MORDECHAI REINITZ, YECHIEL  
27 RICHTER, YEHUDIS RICHTER, YISROEL RICHTER, YITZCHOK  
28 RICHTER, PERL BRAILOFSKY, MALKY BREUER, ESTER BUXBAUM,  
29 GITTEL COHEN, CHAYA FREISEL, RACHEL ROSNER, ELIZABETH  
30 SCHWARTZ, JACOB SCHWARTZ, MAX SCHWARTZ, MICHAEL  
31 SCHWARTZ, PHILLIP SCHWARTZ, ABRAHAM ZARKOWSKY, ARON  
32 ZARKOWSKY, BSHAVA ZARKOWSKY RICHTER, ESTATE OF ELI  
33 ZARKOWSKY, EZRIEL ZARKOWSKY, GITTEL ZARKOWSKY, MENDEL  
34 ZARKOWSKY, ESTATE OF GOLDIE ZARKOWSKY, JOSEPH  
35 ZARKOWSKY, MIRIAM ZARKOWSKY, SHRAGE ZARKOWSKY, TRANY  
36 ZARKOWSKY, YEHUDA ZARKOWSKY, THE ESTATE OF DAVID  
37 APPLEBAUM, DEBRA APPLEBAUM, THE ESTATE OF JACQUELINE

1 APPLEBAUM, NATAN APPLEBAUM, THE ESTATE OF NAAVA  
2 APPLEBAUM, SHIRA APPLEBAUM, YITZCHAK APPLEBAUM, SHAYNA  
3 APPLEBAUM, TOVI BELLE APPLEBAUM, GEELA APPLEBAUM  
4 GORDON, CHAYA TZIPORAH COHEN, ERIK SCHECTER, SHLOMO  
5 TRATNER, THE ESTATE OF TIFERET TRATNER,

6 *Plaintiffs-Appellants-Cross-Appellees,*  
7

8 - v. -

9 CRÉDIT LYONNAIS, S.A.,

10 *Defendant-Appellee-Cross-Appellant.\**  
11

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12 For Strauss Appellants: PETER RAVEN-HANSEN, Hackensack, New  
13 Jersey (Gary M. Osen, Ari Ungar, Michael Radine,  
14 Aaron Schlanger, Osen, Hackensack, New Jersey;  
15 Steven M. Steingard, Stephen H. Schwartz, Kohn,  
16 Swift & Graf, Philadelphia, Pennsylvania; Shawn  
17 P. Naunton, Zuckerman Spaeder, New York, New  
18 York; C. Tab Turner, Turner & Associates, North  
19 Little Rock, Arkansas, on the brief).

20 For Wolf Appellants: FLEISCHMAN BONNER & ROCCO, New York,  
21 New York (James P. Bonner, Patrick L. Rocco,  
22 Susan M. Davies, New York, New York, of  
23 counsel; Richard D. Heideman, Noel J. Nudelman,  
24 Tracy R. Kalik, Heideman Nudelman & Kalik,  
25 Washington, D.C., of counsel).

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\* The Clerk of the Court is directed to amend the official caption to conform with the above captions of these cases, which were consolidated for adjudication in the district court.

1 For Appellee: JONATHAN I. BLACKMAN, New York, New  
2 York (Mark E. McDonald, Katherine R. Lynch,  
3 Rathna Ramamurthi, New York, New York,  
4 Cleary Gottlieb Steen & Hamilton, on the brief).

5 For Amici Curiae, in  
6 support of Appellee: MAYER BROWN, Washington D.C. (Andrew J.  
7 Pincus, Alex C. Lakatos, Marc R. Cohen, of  
8 counsel), *for Institute of International Bankers,*  
9 *European Banking Federation, and French Banking*  
10 *Federation.*

11 Appeal and cross-appeal from a March 31, 2019 judgment of the  
12 United States District Court for the Eastern District of New York.

13  
14 This cause came on to be heard on the record from the United States  
15 District Court for the Eastern District of New York and was argued by counsel.

16 ON CONSIDERATION WHEREOF, it is now hereby ordered,  
17 adjudged, and decreed that the judgment of said District Court be and it hereby is  
18 affirmed; the cross-appeal is dismissed as moot.

19 Plaintiffs Moses Strauss, *et al.*, and Estate of Bernice Wolf, *et al.*, who  
20 were injured, or represent persons who were injured, in terrorist attacks in Israel  
21 and Palestine in 2001-2004, allegedly committed by Hamas, jointly appeal from a  
22 March 31, 2019 judgment of the United States District Court for the Eastern District  
23 of New York in these consolidated actions, Dora L. Irizarry, then-*Chief Judge*, (A)  
24 dismissing the complaints seeking damages against defendant Crédit Lyonnais,  
25 S.A. ("CL"), under the Antiterrorism Act of 1990 ("ATA"), *see* 18 U.S.C. §§ 2333(a),  
26 2331(1), and 2339B, for providing banking services to a charitable organization that  
27 allegedly had ties to Hamas; and (B) denying leave to amend the complaints to  
28 allege aiding-and-abetting claims against CL under the Justice Against Sponsors

1 of Terrorism Act ("JASTA"), *see id.* § 2333(d). The district court granted CL's motion  
2 for summary judgment dismissing the complaints, relying principally on this  
3 Court's decision in *Linde v. Arab Bank, PLC*, 882 F.3d 314 (2d Cir. 2018), and  
4 concluding that plaintiffs failed to adduce evidence sufficient to permit an  
5 inference that CL had committed an act involving violence, danger to human life,  
6 or an appearance of intent to intimidate or coerce a population or a government--  
7 elements of an international terrorism claim under the ATA. The court also denied  
8 plaintiffs' motion for leave to file an amended complaint to allege that CL is liable  
9 for the attacks as an aider and abetter, concluding that, given the record on the  
10 summary judgment motion, such an amendment would be futile. *See Strauss v.*  
11 *Crédit Lyonnais, S.A.*, 379 F.Supp.3d 148 (E.D.N.Y. 2019).

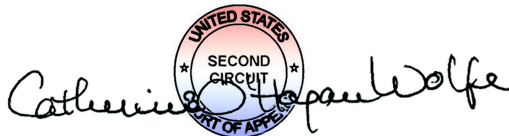
12           On appeal, plaintiffs argue principally that the district court erred by  
13 misapplying *Linde* and concluding that plaintiffs' evidence of CL's violation of  
14 18 U.S.C. § 2339B was insufficient to permit inferences either that CL itself engaged  
15 in terrorist activity or that it had the requisite state of mind to make it liable for  
16 aiding and abetting that activity. In its cross-appeal, CL argues that if we do not  
17 affirm the judgment of the district court, we should reverse that court's denial of  
18 CL's motion to dismiss the actions for lack of personal jurisdiction; however, CL  
19 urges that "[g]iven the number of years during which these cases have already been  
20 pending, this Court can and should 'assume jurisdiction' and affirm on the  
21 . . . merits . . . as a means of preventing waste of judicial resources." (CL brief on  
22 appeal at 61-62 (other internal quotation marks omitted).)

23           This appeal was argued in tandem with the appeal in *Weiss v. National*  
24 *Westminster Bank PLC*, Nos. 19-863, -1159, which we have decided today in a  
25 published opinion, *see* --- F.3d --- (2d Cir. 2021) ("*Weiss*"). Although CL is not the  
26 defendant against which the Weiss actions were brought, both sets of actions were  
27 commenced in the mid-2000's asserting ATA claims premised on international  
28 terrorist attacks attributed to Hamas; the actions proceeded largely along parallel  
29 lines (sometimes with coordinated pretrial discovery proceedings), involved the  
30 same legal issues, and were dismissed by the same district judge in opinions filed  
31 on the same day, with the opinion in the present case frequently citing past  
32 decisions and reasoning in the Weiss actions.

1           The issues in these two sets of actions were the same; the issues in both  
2 appeals are the same; the arguments made by both sets of appellants are the same;  
3 and the two appellees pursue virtually identical conditional cross-appeals. We  
4 conclude, for the reasons discussed in *Weiss*, that the district court did not err in  
5 granting summary judgment dismissing the Strauss and Wolf plaintiffs' complaints  
6 under the ATA or in denying their request for leave to amend in order to bring  
7 claims under JASTA. We accordingly affirm the judgment of the district court;  
8 CL's cross-appeal is thus moot.

9           We have considered all of plaintiffs' arguments on appeal and have  
10 found them to be without merit. The judgment of the district court is affirmed; the  
11 cross-appeal is dismissed.

12                           FOR THE COURT:  
13                           CATHERINE O'HAGAN WOLFE, Clerk of Court  
14

The signature of Catherine O'Hagan Wolfe is written in cursive over a circular seal. The seal contains the text "UNITED STATES", "SECOND CIRCUIT", and "COURT OF APPEALS" around a central emblem.

A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit

The signature of Catherine O'Hagan Wolfe is written in cursive over a circular seal. The seal contains the text "UNITED STATES", "SECOND CIRCUIT", and "COURT OF APPEALS" around a central emblem.